

Commonwealth of Massachusetts

Suffolk, S.S.

Superior Court Civil No. SUCV2010-0802-H

Sanjoy Mahajan, Victor Brogna, Stephanie Hogue, David Kubiak,
Mary McGee, Anne M. Pistorio, Thomas Schiavoni, Pasqua Scibelli,
Robert Skole, and Patricia Thiboutot,
Plaintiffs

v.

Massachusetts Department of Environmental Protection
and
Boston Redevelopment Authority,
Defendants

Plaintiffs' Additional Exhibits and References Relevant to Article 97 Protection of the Project Site

The Court (Paper 16, dated December 9, 2010) scheduled an additional hearing on whether the relevant area of Long Wharf (the project site) is protected by Article 97. The order particularly requested photos and exhibits, which are furnished in this document.

The photos, exhibits, and record references hereinafter cited show that the project site is protected by Article 97. The citations fall into three categories:

- A. Long Wharf, including the project site, was taken or acquired for Article 97 purposes.
- B. Long Wharf has been held for use as public open space (an Article 97 purpose).
- C. Long Wharf is a historic district (an Article 97 purpose).

The plaintiffs waive their objection to the inclusion of pp. 1601–1656 in the record, previously made in Plaintiffs' Response to Defendants' Joint Motion to Correct the Administrative Record.

A. Long Wharf, including the project site, was taken or acquired for Article 97 purposes

1. **THE TAKING AREA INCLUDED THE PROJECT SITE.**

The BRA took Long Wharf in 1970 (Record, p. 1646–1654). The area begins at Atlantic Avenue and extends to the Boston Harbor, excluding only the Chart House and Custom House Block buildings (and certain underground rights and easements) (Record, p. 1648). The recorded plan (Record, p. 1652, 1654 and also Exhibit 1 to this document) shows the same area.

2. **LONG WHARF WAS TAKEN FOR AN ARTICLE 97 PURPOSE.**

The 1970 Order of Taking refers to the purposes given in a 1965 Order of Taking (Exhibit 2 to this document), which itself incorporates the purposes of the 1965 Urban Renewal Plan. These purposes include two Article 97 purposes: an observation platform (Record, p. 1613) and public open space (Map 2 of Exhibit B of the Downtown Waterfront–Faneuil Hall Urban Renewal Area, included as Exhibit 3 to this document). Additionally, the Table of Land Use and Building Requirements (Record, p. 1624) for Long Wharf (Land Use Designation A-8) gives as permitted uses only “public open space”.

The Quinn opinion defines natural resources (which are thereby protected by Article 97) to include “seashores, dunes, marine resources, wetlands, *open spaces*, natural areas, parks or historic districts or sites.” (Emphasis supplied, Quinn Opinion, p. 143.)

B. Long Wharf has been held for use as public open space (an Article 97 purpose)

1. THE BRA'S MASTER PLAN (1981) SAYS THAT LONG WHARF WILL BE "SIMPLE, UNCLUTTERED PUBLIC OPEN SPACE" (RECORD, P. 1656).
2. THE BRA'S CHAPTER 91 LICENSE PLAN, FOR BUILDING THE SHADE PAVILION, GIVES THE PURPOSE OF THE AREA AS "PASSIVE RECREATION" (RECORD, P. 678).

3. IN 1989 LONG WHARF WAS OFFICIALLY DEDICATED AS A PARK.
A photo of the resulting bronze plaque near the pavilion is included as Exhibit 4 to this document. The BRA is one of the organizations credited on the plaque. The plaintiffs are aware of no dispute over the fact that a park is an Article 97 protected area.
4. THE BOSTON PARKS AND RECREATION DEPARTMENT LISTS LONG WHARF AS PROTECTED BY ARTICLE 97 (RECORD, P. 672, 674, 795).
In particular, the 2008–2012 Open Space Plan (Record, p. 795) identifies Long Wharf as "Passive" (i.e., passive recreation) and "Shelter" (provided by the pavilion), both Article 97 purposes.
5. THE EOEEA SECRETARY IDENTIFIED LONG WHARF AS "PUBLIC WATERFRONT PARKLAND" (RECORD, P. 452).
6. THE BRA ACKNOWLEDGES THAT THERE IS A "PARK LOCATED AT END OF [LONG] WHARF WITH BENCHES."
This quotation comes from the BRA's owned-land database; the entry is included as Exhibit 5 to this document.

**C. Long Wharf, including the project site, is a historic district
(an Article 97 purpose)**

1. THE BRA'S ENF STATES THAT LONG WHARF IS A HISTORIC DISTRICT (RECORD, P. 892).
2. LONG WHARF, INCLUDING PROJECT SITE, IS ON THE NATIONAL REGISTER OF HISTORIC PLACES.

The verbal boundary description and the map from the National Register of Historic Places Registration Form are included as Exhibit 6 to this document.

The Quinn opinion defines natural resources (which are thereby protected by Article 97) to include "seashores, dunes, marine resources, wetlands, open spaces, natural areas, parks or *historic districts or sites.*" (Emphasis supplied, Quinn Opinion, p. 143.)

Respectfully submitted,
Plaintiffs,
by their attorney,

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Dated: December 17, 2010

Exhibit 1

Plan of Partial Taking of Long Wharf from the 1970 Order of Taking

Exhibit 2

1965 Order of Taking (excluding its Annex A)

Exhibit 3

Map 2 of Exhibit B to the Downtown Waterfront–Faneuil Hall Urban Renewal Plan

Exhibit 4

Photograph of the bronze plaque at the seaward end of Long Wharf
dedicating Long Wharf as a park

Exhibit 5

Entry on Long Wharf from the BRA's owned-land database

Exhibit 6

Verbal boundary description and map #5 from the National Register of Historic Places Registration Form (excerpt)